Hovsepian v. Apple, Inc. Doc. 125

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

Acacia Media Technologies Corp., Plaintiff, vs. New Destiny Internet Group, et al., Defendants.	NO. C 05-01114
And All Related and/or Consolidated Actions. /	**ORDER REQUIRING ADDITIONAL BRIEFING BEFORE THE FEBRUARY 24, 2006 HEARING DATE**

In this MDL litigation, Plaintiff Acacia Media Technologies has filed a "Motion for Entry of Judgment of NonInfrigement and Invalidity for Indefiniteness of U.S. Patent No. 6,144,702 and Certification Pursuant to Fed. R. Civ P. 54(b)." The Motion is scheduled to be heard on **February 24, 2006 at 9 a.m.**

To date the Court has not received any response by any defendant to the motion. On before **February 13, 2006**, the Court directs each party to file and served a Memorandum of Law addressing the following issues:

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1. Whether the Court should regard the pending motion as one in which Acacia is moving for partial summary judgment against Acacia and in favor of all Defendants on all claims of infringement of the '707 patent on the following ground: Based on the Court's December 7, 2005 Order, the affirmative defense of invalidity is sustained as a matter of law;

2. Whether the Court should also regard the pending motion as one in which Acacia is moving for partial summary judgment against Acacia and in favor of all Defendants on the ground that the accused products of the Defendants do not infringe the '702 patent. The Court notes that it has not adjudicated what are the accused products or whether they infringe the '702 patent. However, the pending motion is one seeking a partial summary judgment of "noninfringement." The Court directs the parties to address any ground for judgment of noninfringement of the '702 patent;

3. In view of the pending motion to separate further litigation of the '702 patent from all other patents, the Court directs each party to state that party's position with respect to whether any of the issues involved in the '702 patent are present in any of the other patents involved in the MDL case such that the appellate court will not be required to decide the same issues more than once if there are subsequent appeals.

Immediately following the hearing on the pending motion, the Court will conduct a Case Management Conference to establish a schedule for further proceedings in the case. On or before **February 17, 2006** the parties shall file a Further Case Management Statement which combines their respective positions with respect to what claims must be construed and a schedule for those proceedings. The parties are directed to confer with one another to coordinate the submission of the Further Case Management Statement.

Pursuant to General Order 45.VI.G., a paper copy of all the e-filed submissions must be lodged with the Chambers of Judge Ware.

Dated: February 3, 2006

JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Dated: February 3, 2006 **Richard W. Wieking, Clerk**

By: /s/ JW Chambers
Melissa Peralta
Courtroom Deputy